In The Matter Of License No. 185391 And All Other Licenses
Issued to: JAN VAN DORN

UNITED STATES COAST GUARD

JAN VAN DORN

his appeal has been taken in a
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icense upon finding him guilty
allege that while serving as Master on board the United States SS
EMSEN HEIGHTS under authority
or ut 23 April 1957, Appellant contributed to a collisio
b RESIDENT JOHNSON, during conditions
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S speed

At the hearing, Appellant was represented by counsel of hi
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specification on behalf of Appellant who was not present o
the first day of the hearing.

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rep a fair summary of the rather long record o
investigation.

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A not order the engines stopped when
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Appellant's ship was in the path of the other vessel.

par were given an opportunity to submit proposed findings a conclusions. The Examiner then rendered the decision in which he

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The decision was served on 23 April 1958. Appeal was timely

FINDINGS OF FACT

n 23 April 1957, Appellant was serving as Master on board th United States SS REMSEN HEIGHTS and acting under authority of his icense No. 185391 when his ship collided with the United Sta PRESIDENT a outhwesterly direction from Toga Se Buoy, the sea buoy marki approach to the marked channel leading into the harbor of Nagoya, , t in a n

t ide of he REMSEN HEIGHTS at an angle repairs e

T n and 7639 gross tons. She was outbound from Nagoya with d ard and 23 feet, 6 inches aft. The essel was equipped with radar and in operation at all pertinent times.

he PRESIDENT JOHNSON is a C-3 l e Buoy cours 2 until about three minutes before the collision. Her draf w e time

The l 957 with a pilot on board. Th the ship was near the seaward end of the marked channel an Ap took the conn navigating largely by his persona o n were

true, at one-half maneuvering speed of about 8 knots, toward Toga Buoy e

At 0357, Appellant first observed a pip on the radarscope which represented the vessel later identified as the PRESIDENT JOHNSON. At this time, the other ship was bearing 186 degrees true at a distance of 4 miles. The radar was set on the 4 mile range scale. Neither this range and bearing nor subsequent ones observed by Appellant were plotted or recorded in any manner. Just after Appellant saw this pip on the radarscope, the Mate on watch reported that he heard a whistle of the port bow. Appellant concluded that this signal came from the ship he was observing on the radar. The engine speed was not changed from 8 knots.

At 0410, Toga Se Buoy was passed close abeam to port. Appellant ordered a course change to 230 degrees true in order to allow the approaching vessel sufficient room to pass under the stern of the REMSEN HEIGHTS and negotiate the turn to the right, toward Nogoya, at Toya Se Buoy. Appellant estimated from the radarscope that the PRESIDENT JOHNSON was bearing 175 degrees true at a distance of 1.2 miles. Ordinarily, Appellant would have changed course to 170 degrees true at Toga Se Buoy in order to proceed seaward.

When the radar indicated to Appellant that the other ship was 4 points on the port bow at a distance of less than a mile, he changed course to 240 degrees true at 0413 but the engine speed was still not altered. At 0414, course was changed 10 degrees to the right, for the third time, to 250 degrees true. Appellant ordered the speed reduced to slow ahead of 4 knots. A few seconds later, the masthead lights of the PRESIDENT JOHNSON were sighted 600 feet away, one point forward of the port beam. Appellant ordered hard right rudder and immediately countermanded this with hard left rudder. He ordered the engines full speed ahead. Before these orders had any appreciable effect, the bow of the PRESIDENT JOHNSON penetrated the port side of the REMSEN HEIGHTS at 0415 and remained there until the extent of the damage was investigated.

As indicated above, the PRESIDENT JOHNSON was on course 352 degrees true making 12 knots. At 0400, the fog signal of the REMSEN HEIGHTS was heard on the starboard bow and reported to the Master of the PRESIDENT JOHNSON. It was reported again at 0412. Speed was then reduced to one-half maneuvering speed of 8 knots. The Second Mate was manning the radar at 0412 and he reported to the Master that the REMSEN HEIGHTS was bearing 012 degrees true at a distance of 2 miles. (Apparently this range was erroneous in that it was greater than the actual distance.) The lights of the latter vessel were sighted at a distance of less than 2 ship lengths from the PRESIDENT JOHNSON whose Master ordered hard right rudder and full speed astern less than a minute before the two vessels came together. Both vessels returned to Nagoya for repairs.

Appellant has no prior record

This appeal has been taken from the order imposed by th Examiner. Appellant contends that:

POINT Appellant was not required to order the engines opped when the other ship's fog signal was first heard. Th "position" e m e and speed, at least as accurately by radar observation as these factors could have been ascertained y visual observation. Appellant knew that the other vessel was in fairway of the same channel and proceeding in the opposite in a narrow channel. Therefore, her position was

POINT The speed of Appellant's ship was not immoderate onsidering the circumstances known to him at the time. Appellant the action most likely to avoid collision by turning to th right to get out of the fairway of the narrow channel and th apparent path of the PRESIDENT JOHNSON. The alternative solution of slowing his ship was not practicable since avoiding action was with a vessel approaching at a speed of 12 knots in a

brought ,
becaus the clockwise tidal swirl around Toga Se Buoy set ppellant's ship to the east and the PRESIDENT JOHNSON to the west.

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rec that it is pertinent in imposing suspension orders to onsider the relative degree of fault of two ships in a collision.

Graham, James and Rolph of San Francisco California, by Francis L. Tetreault, Esquire, o Counsel.

OPINION

the specifications. Navigation in fog on the high seas is go by Rule 16 of the International
which is very strictly enforced by the courts. The slightes revised wording of the rule which became effective on 1 Januar 1954 reads as follows:

"(a) Every vessel, or seaplane when taxi-ing on the water, shall, in fog, mist, falling snow, heavy rainstorms or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions.

(b) A power-driven vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over."

POINT I.

It has been stated repeatedly that the command to stop the vessel's engines is imperative when the conditions described in the above Rule 16 (b) confront the navigator. See Commandant's Appeal Decisions Nos. 728 and 989 citing Lie v. San Francisco and Portland SS Co. (1917), 243 U.S. 291; Rules of the Nautical Road by Farwell,rev. ed. by Prunski (1954), page 315, 316; Rules of the Road at Sea (1920) by LaBoyteaux, page 88 to 103; Griffin on Collision (1949) , page 313 to 323. In the Supreme Court case cited above, the SELJA heard the other vessels's fog signal 16 minutes before the collision occurred but her engines were not stopped until 10 later. The SELJA was held mutually liable with the other vessel, the court stated that ". . . the case is not one for the application of refinements as to what would have been good seamanship without the rule . . . "

Thus, Appellant was guilty of this statutory violation unless the position of the PRESIDENT JOHNSON was "ascertained" by radar observations and other known factors when the fog signal was reported to Appellant at 0357, or unless the "circumstances" were such that the REMSEN HEIGHTS would have been placed in immediate danger by stopping the engines at this time. the latter possibility is eliminated by Appellant's admission, in his testimony at the hearing, that there would have been no danger, independent of the other vessel, in stopping the engines of his ship. Considering the fact that there was at least a six-mile width of open sea in which either vessel could navigate, it cannot be seriously claimed that the temporary stopping of the engines would have placed Appellant's vessel in danger due to the presence of the other vessel. The imperative command of Rule 16(b) is to immediately stop the vessel's engines when a fog signal is heard and then navigate with caution. It is not required that the engines remain stopped indefinitely or even until the other vessel is sighted.

Furthermore, I do not agree with Appellant's contention that by means of his radar observations and his knowledge as to the courses the other vessel would take in the narrow channel, he had "ascertained" the position of the PRESIDENT JOHNSON. First of all, as indicated above, the ships clearly were not navigating in a narrow channel. Appellant might properly assume that the other vessel was heading for Nagoya but since the area of navigation was far from being restricted to the limits of a narrow channel, he could not determine what courses this ship would follow in reaching her destination.

Limited to the radar information, it is apparent that Appellant could not have known the course of the PRESIDENT JOHNSON

when he received the first report of her fog signal because this report was made just after Appellant initially observed, at 0357, the pip on the radarscope representing the other ship. In cases prior to where the use of radar was involved, the courts have held that the position of another vessel is not "ascertained" unless her course, or change of position, as well as her momentary location is known. The El Monte (D.C.N.Y., 1902), 114 fED. 796; The Prov (D.C.R.I., 1922), 282 fED. 658. Appellant did not comply wit these standards. A momentary, clear visual sighting of the shi would have disclosed her approximate course to Appellant, but one radar observation will not do so.

stated in No. 989 of 22 1957, there has not been brought to my attention any

been "ascertained" by seeing on a radarscope an image whic represents the vessel; it is not the function of the Coast Gu make such an independent determ rule of navigation which has been so stringently enforced by th courts. g the engines of his ship to be stopped when a fog signal was heard

It seems that the result, as to have been The Prins lexander (House of Lords, 1955 the propos f "ascertaining " the position of a vessel without the necessity of

to a collision, on 10 July 1952, in the North Sea between tw vessels proceeding on opposite courses in foggy weather. Counsel for S ALE had been "ascertained" by a series of unrecorded radar bservations before her of signal was heard and, therefore, it was ot necessary to stop the engines of the ROGENAES. The court first ferred to Lord Macmillan's observations, in a M (1935) A.C. 177, that the position of the TOYOOKA MARU

wrong; the only data available were that the fog signals were on the KIANGSU's port bow, that the outward bound ships keep south side of the channel and t would be crossing the fairway in a fog; an inference based on data was not an ascertainment within the meaning of Rule 1 although, in some cases, the da may a certai or ascertainment. The court, in the PRINS ALEXANDER,

"There of error in the use of

the PPI (Plan position indicator in a radar set). There should be, we are advised, in the circumstances such as the present, continuous observation by one man and plotting of bearing if reliable inferences are to be drawn. Art, 16 [Rule 16] stands, and it is to be noted that the new Rule which has now replaced it is in substantially the same terms. It may be that proper observations on a PPI can `ascertain' the position of a vessel in the sense explained by Lord Macmillan. They clearly did not do so in this case so far as the N.O. ROGENAES is concerned."

This seems to be contrary to the proposition for which Appellant cites this English case as authority. It is also noted that the court does not positively state that there are any circumstances under which the position of a vessel can be "ascertained" by radar observations. The use of the word "may" indicates that the court felt there is only a possibility that such observations might, in any case, be considered adequate to meet the requirements of the rule.

POINT II

It is also my opinion that Appellant violated Rule 16 (a) by continuing at a speed of 8 knots, until one minute before the collision, in a dense fog when he knew that a ship was approaching at a high rate of speed on a converging course. A quick mental calculation by Appellant, when he became aware of the presence of the PRESIDENT JOHNSON at 0357, should have made it apparent that both ships would be in the vicinity of Toga Se Buoy in about 15 minutes. Since Appellant did not know at what point the other vessel intended to turn to her right toward Nagoya, it was incumbent on him to navigate with extreme caution. This could have been accomplished best by slowing his ship immediately until the intention of the other vessel could be determined. Only then would he have maneuvered his ship with assurance of avoiding a collision. Such action would have been consistent with the statement that "where the danger is great, the greater should be the precaution." The Clarita (1874) 90 U.S. 1.

Even though continuing at 8 knots, Appellant did not plot the radar ranges and bearings of the other vessel in order to obtain an estimate of her course and speed. The failure to do this held to constitute poor seamanship. The marine Leopard (D.C.Calif. 1957) 152 F. Supp 197, 1957 A.M.C. 2477. Such information would have indicated to Appellant that the two ships would approach close to each other to the west of Toga Se Buoy if the PRESIDENT JOHNSON did not change her course to pass the buoy abeam to port. The Mate on watch was available to plot these ranges and bearings on a separate plotting board and convert them from relative movement to the true

course and speed of the other vessel.

Another factor to consider is that the REMSEN HEIGHTS probably could not meet the mechanical tests set forth in some court decisions to determine whether the speed of a ship was "moderate." Commandant's Appeal Decision No. 955 cites decisions referring to the tests of stopping dead in the water within one-half the distance of visibility and being able to stop before colliding with an approaching vessel which is obeying the rule to proceed at a moderate speed.

For these reasons, there appears to have been no justification for Appellant's action in navigating his ship at a speed of 8 knots past Toga Se Buoy and then turning to the right on the assumption that this would allow the approaching vessel ample room to pass astern of the REMSEN HEIGHTS. Rule 16 was intended to do away with just such speculation as to what the other vessel intends to do in heavy fog which prevents ships from seeing each other. Appellant's guess in this case was incorrect although the record indicates that the PRESIDENT JOHNSON went beyond the point where ships usually turned to the right to approach the harbor of Nagoya. The possibility that the ships were set closer together by a tidal swirl around Toga Se Buoy does not alter the fact that Appellant was navigating at an immoderate speed under the "existing circumstances and conditions." Rule 16(a).

CONCLUSIONS

It is my conclusion that, in both of these respects, Appellant was not only guilty of negligence but that his negligence contributed to the collision. The International Conference for the Safety of Life at Sea, London, 1948, recommended that Masters be informed that the possession of radar would not, in any way, relieve them from their obligations strictly to observe the International Rules for preventing collisions at sea, and in particular, the obligations contained in Rule 16. Nevertheless, due to the apparently greater fault on the part of the PRESIDENT JOHNSON and the three months' suspension imposed against her Master and Mate, the order herein will be modified.

ORDER

The order of suspension is modified to provide for a period of two months' suspension, rather than three months.

As so MODIFIED, the order of the Examiner dated San Francisco, California, on 21 April 1958, is AFFIRMED.

J. A. Hirshfield

Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 19th day of November, 1958.